



NATIONAL TRANSPARENCY AUTHORITY

ETHICS COMMITTEE OF ARTICLE 74 OF LAW 4622/2019

DECISION 15/2024

The Ethics Committee of Article 74 of Law 4622/2019 met in session on March 22, 2024, Friday, at 12:00 p.m., following the invitation of March 15, 2024, sent by Acting Chairman of the Ethics Committee to the regular members by email, together with the agenda. The meeting was held by teleconference and was attended by the following members of the Committee: Nikolaos Douladiris, acting, pursuant to the decision of the Management Board of the National Transparency Authority (NTA)/*Management Board of the National Transparency Authority* dated January 18, 2024, as Chairman of the Management Board and, by extension, in accordance with Article 74(par.2) of Law No. 4492/2016, as acting Chairman of the Ethics Committee (Chair), Konstantinos Georgakis, Legal Adviser to the State (regular member), Nikolaos Karagiorgis, Legal Adviser to the State (regular member), Dionysios Laskaratos, First Vice-President of Supreme Council for Civil Personnel Selection (ASEP) (regular member) and Andreas Pottakis, Ombudsman (regular member). Secretarial support was provided by Eleni Magkafa, a secondary education category employee, administrative secretary with grade A, of the General Directorate of Financial and Administrative Services and Electronic Governance of the National Transparency Authority.

The purpose of the above meeting was to discuss the application, registered with protocol number 16/14.03.2024, submitted by Mr.....who served from September 5, 2019, to December 31, 2023, as First Vice Chairman of the Hellenic Capital Market Commission. The applicant resigned from the above position on December 19, 2023, and his resignation was accepted by decision of the Minister of National Economy and Finance dated February 28, 2024, but with effect from December 31, 2023, and published in the Government Gazette on February 28, 2024 (Government Gazette YODD 182/28-2-2024). By his application dated 14.03.2024 submitted to the Ethics Committee, he requested permission to take up the position of Managing Director and to become a shareholder in the public limited and unlisted company under the name "....", which was established on and whose object is the provision of investment services.

Pursuant to Article 73 of Law 4622/2019, it is stipulated, inter alia, that persons appointed to the positions referred to in Article 68 of the same law, namely (a) members of the Government and Deputy Ministers, (b) the General and Special Secretaries, as well as the Coordinators of



the Decentralized Administrations, (c) the Presidents or heads of Independent Authorities and the Presidents, Vice-Presidents, Governors, Interim Governors, Sub-Governors, managing or executive advisors of legal entities of public law (L.E.P.L.) and private law (L.E.Pr.L.), whose selection is at the discretion of the Government, with the exception of bodies falling within the scope of Chapter B of Law 3429/2005 (A' 314), are required, for one (1) year after leaving their position for any reason, to obtain permission for any professional or business activity related to the activity of the body to which they were appointed, given the fact that this could create a conflict of interest within the meaning of Article 71 of Law 4622/2019. According to the provisions of this article, a conflict of interest is any situation in which the impartial performance of the duties of the persons being audited is objectively affected.

The impartial performance of duties is particularly affected when there is: (a) a financial or non-financial benefit for themselves, their spouses or cohabiting partners within the meaning of Article 1 of Law 4356/2015, their relatives by blood or marriage, whether in a direct line without limitation, or in a collateral line, up to the second degree, as well as for natural or legal persons with whom they have a special bond or relationship, and (b) financial or other harm to natural or legal persons with whom there is a particular enmity. Such a situation arises in particular: (a) through the provision by them of services - under any legal relationship - to a natural or legal person governed by private law in Greece or abroad, or (b) through their participation in the capital or management of the above legal entities, except in cases of acquisition of shares, corporate shares or other rights through inheritance. In the case in question, the applicant wishes to participate both in the administrative body and in the capital of the aforementioned investment services company.

The above persons who intend to engage in an activity that may fall within the scope of paragraph 1 of Article 73 of Law 4622/2019 must submit a relevant application to the Ethics Committee referred to in Article 74 of the same law. The Committee, after considering the application of the person, shall issue a reasoned decision within an exclusive period of one (1) month. During this period, the person must refrain from carrying out the activity to which the application relates. If the Committee does not decide within the specified time limit, the license shall be deemed to have been granted. The Committee, which, pursuant to Article 73(par.3), fourth subparagraph, of Law 4622/2019, may request from the applicant any additional information it deems necessary for taking a decision, may, by its decision, taken at its discretion, pursuant to Article 73(par.4) of Law 4622/2019, which shall be published on the website of the National Transparency Authority: (a) allow the activity in question without restrictions or conditions, (b) allow it with the necessary restrictions and conditions, (c) prohibit it completely. Cases (b) and (c) may not exceed a time limit of one (1) year after the person has left the position referred to in Article 68 of Law 4622/2019 for any reason. In cases (b) and (c), the Committee



may determine reasonable compensation for the person, that is borne by the State Budget.

The application in question is admissible, as it has the required legal form of the application under Article 73(par.1) and (par.2) of Law 4622/2019 and is submitted by a person who is legally entitled to do so, because the applicant, in his capacity as Vice-President of a legal entity of public law (L.E.P.L.) falls within the scope of Article 68(par.1)(c) of Law 4622/2019, which includes, in its personal scope of application, Presidents, Vice-Presidents, Governors, Interim Governors, Sub-Governors, managing or executive advisors of legal entities of public law (L.E.P.L.) and private law (L.E.Pr.L.), whose selection is the responsibility of the Government. In this case, the Hellenic Capital Market Commission was established as a public legal entity under Law 1969/1991 and the applicant was appointed on 05.09.2019 as First Vice-Chairman of the Hellenic Capital Market Commission by a relevant decision of the Deputy Minister of Finance (Government Gazette YODD 697/5-9-2019), therefore, he is required to submit the above application to the Ethics Committee in accordance with Article 73(par.1) of Law 4622/2019, given that one year has not elapsed since the end of his term of office. Furthermore, at the time of submission of the application on 14.03.2024, the condition of the applicant's resignation from the position he held, which makes him subject to the obligation to obtain permission from the Ethics Committee, was met, because, as stated above, his resignation from the above position was accepted by the competent Minister on February 28, 2024, and this decision was published in the Government Gazette on the same day (Government Gazette YODD 182/28-2-2024).

Next, it must be examined whether the applicant's former position as First Vice-President of the Hellenic Capital Market Commission could, in view of the position he wishes to take up, create a conflict of interest within the meaning of Article 71(par.2) and (par.3) of Law 4622/2019. First, in order to investigate whether there is a connection between the object of the applicant's previous employment, i.e. the Hellenic Capital Market Commission, and the professional activity he now wishes to pursue, it should be noted that Article 78 of Law 1969/1991 provides that the powers of the Hellenic Capital Market Commission are: a. the issuance of regulatory acts where provided for by law, such as on matters relating to the financial statements of public limited companies, portfolio investment companies, and mutual fund management companies, the establishment of new stock exchange matters and stock exchange transactions, securities depositories, and Mutual Fund Management Companies, on the establishment of new stock exchange matters and stock exchange transactions, securities depositories, capital requirements for stock exchange transactions, the limits of the investment policy of portfolio investment companies and mutual fund management companies, the methods of valuation of unlisted securities, the maximum number of members of the Athens Stock Exchange, determining the criteria for exercising their duties, specifying the criteria for granting operating licenses to Public limited Stock Exchange Companies, Portfolio Investment Companies and Mutual Fund



Management Companies, and the readjustment of the minimum share capital of the above companies, b. the granting and revocation of licenses for Public Limited Stock Exchange Companies, Portfolio Investment Companies, and Mutual Fund Management Companies, and the maintenance of a register of such companies, the decision on the admission of companies to the Athens Stock Exchange in the cases referred to in Articles 3 et seq. of Presidential Decree 350/1985, the suspension of trading in shares, their delisting, the appointment of commissioners where provided for by law, the granting of licenses for the issuance of fixed-income securities and share capital increases through public subscription, transfer licenses shares of public limited companies and portfolio investment companies, the approval and amendment of their regulations and articles of association, and the appointment of stock exchange representatives and brokers, c. advising the Minister of National Economy on capital market issues, d. conducting audits of companies listed on the Athens Stock Exchange, Public Limited Stock Exchange companies, stockbroking investment advisors, portfolio investment and mutual fund management companies, and the Athens Securities Depository, regarding the implementation of the provisions of the legislation in force, in particular the audit of compliance with the rules of conduct by the executives of these companies and the announcement of the results of the audits, e. the imposition of disciplinary sanctions provided for by law, f. handling of cases related to the exploitation of inside information, in accordance with the provisions in force, g. regulating any matter relating to the smooth functioning of the stock market, compliance with stock market legislation and any other matter arising from other provisions; supervising compliance with the provisions of Law 1969/1991 and seeking the information necessary for the performance of the Commission's tasks, i. cooperating with other authorities responsible for supervision and control in the financial sector, as well as with the corresponding authorities of other Member States of the European Union; and j. the valuation of movable and immovable property serving the direct operational needs of portfolio investment companies.

In addition, pursuant to Article 11 of Presidential Decree 65/2009 (Organization of the Hellenic Capital Market Commission), the Office of the Chairman and the two Offices of the Vice-Chairmen are responsible for maintaining and handling their correspondence, for scheduling their meetings, visits, and contacts, as well as for any other matter that assists in the performance of their duties.

Furthermore, according to Article 5 of Law 4514/2018, the Capital Market Commission is responsible for granting Public Limited Investment Services Companies (A.E.P.E.Y.) license, to companies wishing to operate in the field of investment services or to engage in investment activities as a regular business activity on a professional basis. The Hellenic Capital Market Commission registers all A.E.P.E.Y. in a register, which is accessible to the public and contains information relating to the services or the activities for which the A.E.P.E.Y. has been granted an operating license. The register is updated regularly. A.E.P.E.Y.s operate as public



limited companies and have their head offices and registered offices in Greece. Their name shall include the words "Public Limited Investment Services Company" and their distinctive title shall be "A.E.P.E.Y.". The share capital of an A.E.P.E.Y. is at least one hundred and fifty thousand (150,000) euros, and when the A.E.P.E.Y. is licensed to carry out transactions on its own account, underwriting or placing of financial instruments with a commitment to purchase, its share capital shall be at least seven hundred and fifty thousand (750,000) euros. In order for an A.E.P.E.Y. establishment license to be issued, its share capital must first be deposited in a special account in a credit institution operating in Greece, and it must have been granted an operating license by the Hellenic Capital Market Commission. Article 6 of the above law defines the content of the A.E.P.E.Y. operating license, and Article 7 provides the procedure for granting the relevant license.

In addition, Law 4514/2018 contains provisions on the general supervision of the operation of A.E.P.E.Y. by the Hellenic Capital Market Commission and on the supervision of more specific issues relating to the operation of A.E.P.E.Y. Specifically, Article 21 of the above law stipulates that A.E.P.E.Y.s that have been licensed must comply on an ongoing basis with the conditions set for the granting of the initial license, and this compliance is supervised by the Hellenic Capital Market Commission, which is entitled to require from A.E.P.E.Y.s to notify it of any material changes to those conditions. Furthermore, in accordance with Article 24(par.12) and (par.13) of the same law, the Capital Market Commission specifies the obligations of A.E.P.E.Y.s with regard to the provision of information to their clients or potential clients and may impose additional requirements on them. In accordance with Article 16 of Law 4514/2018, A.E.P.E.Y.s must record all the services they provide in a manner that allows the Hellenic Capital Market Commission to exercise its supervisory powers and take action to ensure compliance with their obligations, while the Commission may, in exceptional cases, impose requirements on A.E.P.E.Y.s regarding the safeguarding of their clients' assets.

Article 67 of that law provides that the Hellenic Capital Market Commission is responsible for supervising the implementation of the provisions of that law and has all the supervisory powers necessary to exercise its functions, including powers of inspection and enforcement. In particular, it has access to any document it considers relevant to the performance of its supervisory tasks, may carry out general or specific on-site inspections or investigations on supervised entities, in particular where there are indications of infringements, request information from certified public accountants and audit firms on the financial statements of A.E.P.E.Y.s, address matters to the competent authorities for criminal prosecution, assign verifications and audits to certified public accountants, audit firms and other experts, take any measures necessary to ensure that A.E.P.E.Y. continue to comply with the requirements of the legislation in force, suspend the promotion or sale of financial instruments or structured deposits when A.E.P.E.Y. have not developed or implemented an effective product approval process,



require the removal of a natural person from the board of directors of the A.E.P.E.Y.. For infringements of the provisions of the above law, the Hellenic Capital Market Commission imposes administrative sanctions and measures, such as a public announcement naming the natural or legal person and the nature of the infringement, an order requiring the natural or legal person to cease the conduct and not to repeat it in the future, the suspension or revocation of the A.E.P.E.Y. operating license, temporary or, in the case of repeated serious infringements, permanent prohibition of any natural person from participating in the management board or exercising management functions in an A.E.P.E.Y, temporary prohibition on any investment firm from being a member of or participating in a regulated market or MTF, a fine of up to five million (5,000,000.00) euros or up to ten percent (10%) of the total annual turnover of the legal entity.

Furthermore, with regard to the specific areas of supervision of the Hellenic Capital Market Commission over A.E.P.E.Y., pursuant to Article 18(par.6) of Law 4514/2018, the Hellenic Capital Market Commission shall specify the conditions and procedure for granting and revoking the operating license of a multilateral trading facility (MTF), as well as the relevant obligations of A.E.P.E.Y., while pursuant to Article 31, A.E.P.E.Y.s managing multilateral trading facilities (MTFs) shall immediately inform the Hellenic Capital Market Commission of any significant breaches of their rules. Article 35 of the above law stipulates that any A.E.P.E.Y. wishing to establish a branch in the territory of another Member State or to use representatives established in another Member State in which it has not established a branch must notify the Hellenic Capital Market Commission and provide it with relevant information. In the exercise of its duties and after informing the competent authority of the host Member State, the Commission may carry out on-site inspections at the branch of the A.E.P.E.Y. in the host Member State. With regard to branches in Greece, the Commission shall ensure that the services provided by such branches comply with the obligations laid down in Articles 24, 25, 27, and 28 of Law 4514/2018, as well as with the more specific obligations laid down in its decision. The Commission has the right to examine the arrangements of the branch and to request any changes that are strictly necessary to enable it to enforce compliance with the obligations. In accordance with Article 25 of the above law, A.E.P.E.Y.s shall, upon request, demonstrate to the Hellenic Capital Market Commission that the natural persons providing investment advice or information on investment services have the necessary knowledge and abilities to fulfill their obligations.

Therefore, *prima facie*, the licensing and supervision of A.E.P.E.Y. on an ongoing basis, the specification of their obligations, the regular request for information from these companies, the imposition of additional requirements, the conduct of inspections and the imposition of sanctions on these companies in the event of infringements fall within the powers of the Hellenic Capital Market Commission and, consequently, the company in which the applicant



wishes to be employed is one of the entities supervised by the Hellenic Capital Market Commission. Although the applicant did not participate in the licensing of the company in question during his term of office as First Vice-Chairman of the Hellenic Capital Market Commission, he could, by taking up the position he desires in an entity supervised by the authority he previously worked for, be called upon to negotiate with or be subject to control by his former subordinates or superiors and, in general, his former colleagues, and therefore it would be possible for a question to arise as to whether he was exercising undue influence over those persons in the performance of their duties, given the short time that had elapsed since the end of his term of office.

Furthermore, in accordance with Article 37(par.2) of Law 2324/1995, the powers of the two Vice-Chairmen with regard to the supervision of the Directorates are determined by a decision of the Board of Directors of the Hellenic Capital Market Commission, upon recommendation of its Chairman. In particular, in the case under consideration, based on Decision No. 1/851/9.9.2019 of the Board of Directors of the Hellenic Capital Market Commission, the First Vice-Chairman was assigned the supervision of the Listed Companies Directorate (except for Corporate Governance issues), the Research Department, the Administrative Services Department, the Communications Department of the Market Supervision Directorate, and the Markets and Systems Department of the Institutions Directorate (i.e. the Athens Exchange Group).

The Listed Companies Directorate has responsibilities relating exclusively to listed companies, while the Administrative Services Directorate deals with issues relating to the internal organization and staffing of the Hellenic Capital Market Commission. but the Research Department of the Research Directorate, among other things, prepares, in cooperation with the other Directorates, proposals for the promotion of regulatory and legislative measures aimed at improving the institutional framework of the capital market. The Communications Department of the Market Supervision Directorate has the following key responsibilities: responding to investor inquiries in cooperation with the relevant Directorates, as well as receiving and investigating complaints and grievances from investors and third parties regarding violations of capital market legislation, in cooperation with the relevant Directorates where necessary carries out on-site ad hoc audits, where there are serious grounds, in cooperation with the competent Directorates, cooperates with the Banking and Investment Services Ombudsman, informs complainants of the outcome of their complaints, recommends, where appropriate, the imposition of sanctions for infringements of capital market legislation within its competence, in cooperation, where necessary, with the Legal Services Directorate. Finally, the Markets and Systems Department of the Institutions Directorate, among other things, collects and examines the information required by law and recommends the granting of authorisation for the operation of a multilateral trading facility (MTF) to A.E.P.E.Y.s, market operators and credit institutions



and, in addition, verifies compliance with the criteria for determining systematic internalisers, and maintains and publishes a list of A.E.P.E.Y.s acting as systematic internalisers. By virtue of the same decision of the Board of Directors of the Hellenic Capital Market Commission, the Second Vice-Chairman was assigned, among other things, the supervision of the Institutions Directorate, i.e. companies licensed by the Capital Market Commission and whose object is to provide investment services, while the Chairman was assigned as responsible for the Supervision Directorate (Transaction Control and Monitoring Departments). In addition, pursuant to Decision No. 2/851/9.9.2019 of the Board of Directors of the Hellenic Capital Market Commission, the applicant was appointed a member of the Hellenic Capital Market Commission's Committee for the Adoption of Measures and Resolution.

Therefore, during his term of office, the applicant supervised departments with responsibilities partly related to investment firms and may, on one hand, be in possession of confidential information not accessible to the public which could be used in the performance of the activity referred to in the application under consideration and, on the other hand, be called upon to represent the company where he wishes to work vis-à-vis persons who were previously his subordinates, for example in the context of an investigation into a complaint or an on-site inspection by the competent departments of the Hellenic Capital Market Commission.

Taking into account the above, it should be noted, first, that there is a supervisory relationship between the applicant's former and new employer, and that this relationship is very broad in scope, and second, that although the specific remit of the applicant did not include the authorization and supervision of investment firms, there are, however, areas of overlap between its responsibilities and the field of investment companies, namely responding to questions from investors, investigating complaints and allegations from investors and third parties regarding breaches of capital market legislation, the possibility of conducting on-site ad hoc inspections, and making recommendations on whether or not to grant a license to operate a multilateral trading facility (MTF) to an A.E.P.E.Y.

In addition, an additional source of conflict of interest is the applicant's desired participation in the capital of the aforementioned investment services company, because participation in the capital of a legal entity whose object is related to the activity of the entity where the applicant was previously appointed, falls within the cases listed in Article 73(par.1)(b) of Law 4622/2019 in which a conflict of interest arises. Therefore, the creation of a conflict of interest cannot be prevented in any other way than by prohibiting the applicant from participating in the capital of the company in question.

In view of the above, the Ethics Committee unanimously decides not to grant the applicant permission to pursue his desired professional activity, as specified in his application dated March 14, 2024.



Furthermore, it decides by majority vote not to determine reasonable compensation, as provided for in Article 73(4)(c) of Law 4622/2019 as an option available to the Ethics Committee, because the purpose of the above provision is for the Ethics Committee to make use of the remedial measure of compensation in cases where the applicant is excluded from exercising his profession in general, resulting in damage to his professional freedom and financial situation. In this case, however, this is not the case, as it concerns a prohibition on taking up the specific position. It should be noted that, the applicant, taking into account his academic and professional qualifications, could take up another position in the same field of professional activity and, in any case, in a position that does not involve participation in the management or capital of a legal entity of private law, whose object is related to the activity of the body to which the applicant was previously appointed.

The member of the Ethics Committee, Mr. Andreas Pottakis, when examining the issue of whether or not compensation should be awarded as a remedial measure in the case under consideration, formed a minority opinion and expressed the view that the Committee should intervene in this matter, since it does not grant the applicant permission to pursue the professional activity he wishes to pursue and consequently leads him to change his professional orientation, in the sense that the applicant has no choice but to change the subject of his usual activity by taking up another occupation which does not give rise to a conflict of interests with his previous position. Furthermore, the previous position and the applicant's professional experience in general are consistent with taking up a high-level position of responsibility such as that was offered to him, the taking up of which is prevented by the decision of the Ethics Committee not to grant him the requested permission. Consequently, in his view, the prohibition on the applicant from exercising the professional activity described in his application must be accompanied by the award of reasonable compensation, in accordance with Article 73(par.4)(c) of Law 4622/2019.

Acting Chairman of the Ethics
Committee
Nikolaos Douladiris